

Appeal Decision

Site visit made on 7 September 2021

by L Page BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th October 2021

Appeal Ref: APP/V5570/W/21/3271749

634-638 Holloway Road, Islington, London N19 3NU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Nick Cockburn against the decision of the Council of the London Borough of Islington.
 - The application Ref P2019/3143/FUL, dated 18 October 2019, was refused by notice dated 21 December 2020.
 - The development proposed is demolition of the existing buildings and erection of a part four storey part five storey building, comprising of 7 residential units (1 x 1-bed, 5 x 2-beds & 1 x 3-bed) on the upper floors and commercial office floorspace (Class B1a) at ground floor level as well as refuse and cycle storage.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development has been taken from the Council's decision notice because it was indicated under the appeal that the description of development had been amended. The appeal has been dealt with accordingly.
3. A unilateral undertaking was submitted during the appeal. Both the Council and the appellant have provided further comments on it and I have taken these into consideration when making my decision.
4. The revised National Planning Policy Framework (the Framework) was published 20 July 2021, and the new London Plan was also adopted 2 March 2021. These have been considered under the appeal accordingly.

Application for Costs

5. An application for costs was made by Mr Nick Cockburn against the Council of the London Borough of Islington. This application is the subject of a separate Decision.

Main Issues

6. The main issues are:
 - (a) The effect of the proposal on the character and appearance of the area, including on the setting of designated and non-designated heritage assets; and
 - (b) whether affordable housing planning obligations are necessary and suitably provided.

Reasons

Character and Appearance

7. The site is located at 634-638 Holloway Road, which is part of a prominent frontage along a major north south route of metropolitan significance. Directly to the north west at 640-650 Holloway Road is a new mixed use development comprising a building five storeys in height. It is of noticeable scale along the prominent frontage of Holloway Road.
8. However, the design of the building, particularly its predominance of brickwork construction, is in keeping with the prevailing local vernacular. For example, it is quite clear from the evidence presented, and from my site visit, that the majority of buildings along Holloway Road and in the immediate vicinity are constructed out of brickwork. Consequently, it does not present itself as a discordant addition to the street scene, even if it is of appreciable scale and prominence.
9. That said, the new building at 640-650 Holloway Road does include a more contemporary material along its uppermost storey, which may not necessarily be reflective of traditional materials in the immediate vicinity. However, this contemporary material forms a small proportion of the overall building and is clearly subservient to the main structure when taken as a whole. Consequently, the use of a contemporary material in this context adds complimentary interest and does not dominate or detract from the character and appearance of the area, it is sympathetic to it.
10. Mercers Road and Tavistock Terrace Conservation Area is located directly to the south of the site. Islington's Conservation Area Design Guidelines 2002 describes the character and heritage significance of the area as comprising largely commercial frontages along Holloway Road and predominantly residential side streets. The area includes an attractive range of Victorian buildings mostly developed during the 1850s and 1860s. The relatively few buildings that have been built subsequently have generally added to the character of the area. The boundary takes in the locally listed building at 622 Holloway Road. Whilst other locally listed buildings at 529 and 531 Holloway Road sit directly opposite the site. These locally listed buildings are consistent with the Victorian heritage significance of the locality.
11. The site itself comprises a terrace of three storey buildings of Victorian architectural design, comprising traditional brickwork construction. The buildings have been through periods of disuse and generally present as vacant and unkempt within the street scene. However, there is no evidence that their condition has deteriorated to the extent where they detract substantively from the character and appearance of the area or the setting of the conservation area.
12. This is because, aside from deteriorating fenestration detailing and commercial fascia's, the fabric integral to the buildings' construction would appear largely intact. Consequently, in the absence of a building condition survey or similar, it would appear that some minor improvements could bring the buildings into a more kempt state in a relatively short space of time. It follows that any benefits of redeveloping the site in its totality to improve the existing urban fabric would be limited. The more reasonable position based on current evidence is that the buildings currently make a neutral contribution.

13. The conservation area boundary takes in an appreciable portion of Holloway Road in vicinity of the site. Consequently, the site in conjunction with other Victorian era brickwork buildings located in the immediate vicinity along Holloway Road help inform the setting of the northern periphery of the conservation area, contributing to its Victorian era heritage significance.
14. The proposal would demolish the existing buildings at the site. Erecting a part four storey part five storey building, comprising of 7 residential units (1 x 1-bed, 5 x 2-beds & 1 x 3-bed) on the upper floors and commercial office floorspace (Class B1a) at ground floor level as well as refuse and cycle storage. The building would be of appreciable scale, similar to the building at 640-650 Holloway Road. Consequently, it would be prominent in the street scene in a similar manner. However, its primary façade would clearly depart from the principal brickwork construction of buildings within the locality.
15. This is because it would comprise an exposed precast concrete frame, which is a significant and noticeable departure from the predominance of Victorian brickwork construction seen in most buildings nearby. There does not appear to be an anchor point or inspiration derived from the local context. Indeed, the Council rightly contend that such an exposed precast concrete frame is not a design feature that is found along Holloway Road and it would not integrate successfully within the surrounding urban form.
16. The scale of the building is acceptable in and of itself and given the scale of other buildings along Holloway Road this is self-evident. Furthermore, the proportions of the building and other elements of form do not appear disputed by the Council. However, the scale does mean that there would be a significant volume of exposed precast concrete frame on display. This would amplify the proposal's departure from existing designs.
17. This is not to say that contemporary design detailing, such as the bronze panelling, among other things, is completely inappropriate as a matter of principle. However, based on its current arrangement it is the predominance of contemporary design features that lead to the incongruity in the street scene. As already explained, the building at 640-650 Holloway Road is different by comparison, it is anchored by brickwork reflective of the construction of other buildings in the area and any contemporary materials perform a subservient and secondary role in its character and appearance.
18. It is appreciated that the proposal has been carefully designed not to simply extend the design of the new building at 640-650 Holloway Road. Nonetheless, this would not mitigate the imbalance imposed by the predominance of contemporary materials. Although the appellant contends that brick is the principal material used in the proposal, it is not clear to me that this is actually the case. Notwithstanding any quantitative analysis of material volumes that may exist to demonstrate that this is indeed the case, a visual inspection of the plans leads me to a different conclusion in terms of how it presents itself.
19. In my assessment, the exposed precast concrete frame catches my eye to the extent that it would appear the principal structural component of the building. Furthermore, it is not unreasonable to argue that the bronze panelling carries a similar level of visual weight compared to the brickwork. Clearly this is a subjective matter but whatever the case may be in terms of exact proportions, it is not reasonable to conclude that the brickwork presents itself as the clear principal material in the building's construction.

20. It is not clear how the proposed development would act as an effective transition between the building at 640-650 Holloway Road and the smaller, domestically scaled, three storey end of terrace building immediately behind it. This is mainly because when taking views from Holloway Road, it is not clear that the building immediately behind could be observed or whether there would be a visual link.
21. Altogether, the proposal would be a dominant addition to the street scene and would be incongruous with the prevailing design direction of existing buildings. It would therefore detract from the character and appearance of the area, harming the setting's contribution to the heritage significance of Mercers Road and Tavistock Terrace Conservation Area. Given the footprint of the site relative to the size and extent of the Holloway Road, and the wider extent and setting of the conservation area, the proposal would not generate substantial harm, harm would be less than substantial.
22. Paragraph 199 of the Framework is clear that great weight should be given to a designated heritage asset's conservation, irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Paragraph 200 of the Framework is clear that harm can be derived from development within a designated heritage asset's setting. Paragraph 202 of the Framework is clear that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal.
23. As reasoned later in my decision, there are limited apparent public benefits (evidenced or otherwise) that have been advanced in support of the proposal. Consequently, the balancing exercise required by Paragraph 202 of the Framework, wherein I have given considerable importance and weight to the statutory duty to preserve the heritage significance of the conservation area, would not conclude in the proposal's favour, acting as a material consideration to be weighed against it.
24. Paragraph 203 of the Framework requires a similar balanced judgement in the context of non-designated heritage assets, in this case the settings of 529 and 531 Holloway Road and 622 Holloway Road. Consequently, the relevant parts of the foregoing assessment would lead to the same conclusion, insofar as the settings of these locally listed buildings would be harmed in a similar manner to that of the conservation area, and public benefits of the proposal would not outweigh these harms.
25. Overall, the proposal would harm the character and appearance of the area, including the heritage significance of designated and non-designated heritage assets. It would therefore conflict with Policies CS8 and CS9 of Islington's Core Strategy 2011, Policies DM2.1 and DM2.3 of Islington's Local Plan Development Management Policies 2013, Policies D4 and HC1 of the London Plan 2021 and Paragraphs 202 and 203 of the Framework. Among other things these require new buildings to be sympathetic in scale and appearance and to be complementary to the local identity, whilst conserving and enhancing the historic environment.

Affordable Housing Planning Obligations

26. In accordance with Paragraph 57 of the Framework and pursuant to the Community Infrastructure Levy Regulations 2010, planning obligations must only be sought where they are necessary to make the development acceptable in planning terms, and directly, fairly, and reasonably related in scale and kind to the development.
27. It is clear that the Affordable Housing Small Sites Contributions Supplementary Planning Document 2012 requires a £50,000 contribution per dwelling. Furthermore, it is also clear that the Planning Obligations (Section 106) Supplementary Planning Document: Using planning obligations to achieve sustainable development 2016, requires contributions for net additional dwellings. Consequently, affordable housing contributions are necessary to make the development acceptable in planning terms, something that does not appear in dispute between the parties.
28. The correct figure for net additional dwellings is contested in this case. However, notwithstanding the correct figure and potential abandonment issues, it is clear from the drafting of the planning obligation that the contributions are index linked. The sum of contributions could therefore fluctuate and may not remain consistent with the contribution requirements set out within the relevant supplementary planning document, which would appear fixed.
29. Consequently, even if the correct figure is the one advanced by the appellant, I cannot conclude that the affordable housing planning obligation put forward in support of the development would be fairly and reasonably related in scale and kind in perpetuity. Furthermore, there are a number of other potential errors within the unilateral undertaking which are detailed at Paragraph 2.13 of the Council's response to it. These bring about further questions as to the precision of the document when considered in the round.
30. It has been contended that these are not fatal to legality of the unilateral undertaking, however their cumulative effect generates sufficient doubt in my mind about its precision and effectiveness. This doubt remains despite further representations from the parties on the matter. Ultimately, I need to be completely certain about the precision and effectiveness of the document and given the above I am not.
31. Even if the document was accepted as passing the relevant tests, and it was deemed precise and effective, there is no substantive evidence as to the weight that should be apportioned to the affordable housing contribution and whether this would have outweighed the great weight apportioned to the designated heritage asset's conservation, or other harms to non-designated heritage assets and the character and appearance of the area.
32. Consequently, based on the evidence currently advanced, I would not be able to apportion sufficient weight in favour of the proposal in order to pass the relevant tests under the Framework. Consequently, these harms would weigh against the proposal in the balance, and as reasoned in other matters, the presumption in favour of sustainable development would not apply in this case.

33. Ultimately, I cannot be certain that the unilateral undertaking is precise and effective or that it would meet the relevant tests. Altogether, the proposal would conflict with Policy CS12 of Islington's Core Strategy 2011 and the Affordable Housing Small Sites Contributions Supplementary Planning Document 2012. Among other things, these seek to secure sufficient affordable housing contributions. Consequently, any benefits that may have been derived from affordable housing contributions would carry no weight in this context.

Other Matters

34. There is no evidence in front of me demonstrating that other planning obligations, submitted in addition to affordable housing planning obligations, are benefits that can be advanced in support of the proposal. Consequently, even if matters relating to parking permits are consistent with the appellant's contentions and supported by other appeal decisions, the matters have been treated as mitigation under the appeal and carry neutral weight in this context. Furthermore, as I am dismissing the appeal in relation to the main issues on which the application was refused, these other planning obligations would not be determinative under the appeal. Accordingly, it is not necessary for me to make a finding on them.
35. The Council's planning committee is entitled to take a democratic decision counter to the case officer's recommendation or conservation officer's consultation response. It is clear from the Council's appeal statement that they support the planning committee's decision and seek to uphold the refusal. Consequently, the case officer's recommendation, among other representations from consultees, does not bind their case at appeal stage. In relation to pre-application advice given by the Council, Planning Practice Guidance¹ is clear that such advice is not binding and does not pre-empt the democratic decision making process or a particular outcome.
36. Notwithstanding the Council's five year housing land supply or housing delivery test position, even in the event that Paragraph 11 d) was engaged, the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. Consequently, there is no presumption in favour of sustainable development in this case.
37. The full details of the planning history of the site are not in front of me to comprehensively assess the relevance to the proposal in this particular case. Furthermore, some of the planning history cited took place around ten years ago. This is an appreciable period of time where material considerations relating to the development plan, national policy and the character and appearance of the area may have been different in any event.

Conclusion

38. For the reasons given, the appeal is dismissed.

Liam Page

INSPECTOR

¹ Paragraph: 011 Reference ID: 20-011-20140306 Revision date: 06 03 2014